

IC 36-8-8

Chapter 8. 1977 Police Officers' and Firefighters' Pension and Disability Fund

IC 36-8-8-1

Application of chapter

Sec. 1. This chapter applies to:

- (1) full-time police officers hired or rehired after April 30, 1977, in all municipalities, or who converted their benefits under IC 19-1-17.8-7 (repealed September 1, 1981);
- (2) full-time fully paid firefighters hired or rehired after April 30, 1977, or who converted their benefits under IC 19-1-36.5-7 (repealed September 1, 1981);
- (3) a police matron hired or rehired after April 30, 1977, and before July 1, 1996, who is a member of a police department in a second or third class city on March 31, 1996; and
- (4) a park ranger who:
 - (A) completed at least the number of weeks of training at the Indiana law enforcement academy or a comparable law enforcement academy in another state that were required at the time the park ranger attended the Indiana law enforcement academy or the law enforcement academy in another state;
 - (B) graduated from the Indiana law enforcement academy or a comparable law enforcement academy in another state; and
 - (C) is employed by the parks department of a city having a population of more than one hundred twenty thousand (120,000) but less than one hundred fifty thousand (150,000);

except as provided by section 7 of this chapter.

As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.3-1990, SEC.132; P.L.236-1996, SEC.4; P.L.43-1997, SEC.6; P.L.22-1998, SEC.16; P.L.246-2001, SEC.16.

IC 36-8-8-2

"Employer" defined

Sec. 2. As used in this chapter, "employer" means:

- (1) a municipality that established a 1925 or 1953 fund or that participates in the 1977 fund under section 3 or 18 of this chapter; or
- (2) a unit that established a 1937 fund or that participates in the 1977 fund under section 3 or 18 of this chapter.

As added by Acts 1981, P.L.309, SEC.59.

IC 36-8-8-2.1

"Local board" defined

Sec. 2.1. (a) As used in this chapter, "local board" means the following:

- (1) For a unit that established a 1925 fund for its police officers, the local board described in IC 36-8-6-2.

(2) For a unit that established a 1937 fund for its firefighters, the local board described in IC 36-8-7-3.

(3) For a consolidated city that established a 1953 fund for its police officers, the local board described in IC 36-8-7.5-2.

(4) For a unit, other than a consolidated city, that did not establish a 1925 fund for its police officers or a 1937 fund for its firefighters, the local board described in subsection (b) or (c).

(b) If a unit did not establish a 1925 fund for its police officers, a local board shall be composed in the same manner described in IC 36-8-6-2(b). However, if there is not a retired member of the department, no one shall be appointed to that position until such time as there is a retired member.

(c) If a unit did not establish a 1937 fund for its firefighters, a local board shall be composed in the same manner described in IC 36-8-7-3(b). However, if there is not a retired member of the department, no one shall be appointed to that position until such time as there is a retired member.

As added by P.L.236-1996, SEC.5.

IC 36-8-8-2.5

Qualification of 1977 fund under Internal Revenue Code

Sec. 2.5. (a) As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

(b) The 1977 fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the 1977 fund. In order to meet those requirements, the 1977 fund is subject to the following provisions, notwithstanding any other provision of this chapter:

(1) The PERF board shall distribute the corpus and income of the 1977 fund to members and their beneficiaries in accordance with this chapter.

(2) No part of the corpus or income of the 1977 fund may be used or diverted to any purpose other than the exclusive benefit of the members and their beneficiaries.

(3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits any member would otherwise receive under this chapter.

(4) If the 1977 fund is terminated, or if all contributions to the 1977 fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the 1977 fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section.

In order to meet those requirements, the 1977 fund is subject to the following provisions:

(A) The life expectancy of a member, the member's spouse, or the member's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.

(B) If a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

(C) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.

(6) The PERF board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries;

in a manner that discriminates in favor of members who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefit specified by Section 415 of the Internal Revenue Code.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The trustee may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

As added by P.L.55-1989, SEC.61.

IC 36-8-8-2.6

Administration of fund

Sec. 2.6. The 1977 fund shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Act.

As added by P.L.4-1992, SEC.43.

IC 36-8-8-3

Participation by units

Sec. 3. (a) If a town establishes a board of metropolitan police commissioners, or if a town becomes a city, the municipality shall participate in the 1977 fund. However, if a police officer or former marshal is a member of the public employees' retirement fund, he may continue as a member of that fund instead of the 1977 fund. Notwithstanding the age requirements under section 7(a) of this chapter, a police officer or former marshal employed by a municipality at the time the municipality enters the 1977 fund under this section shall be a member of the 1977 fund unless the police

officer or former marshal elects to continue as a member of the public employees' retirement fund. A person may become a member of the 1977 fund under this subsection without meeting the age limitation under section 7(a) of this chapter only if the person satisfies:

- (1) any aptitude, physical agility, or physical and mental standards established by a local board under IC 36-8-3.2; and
- (2) the minimum standards that are:
 - (A) adopted by the PERF board under section 19 of this chapter; and
 - (B) in effect on the date the person becomes a member of the 1977 fund.

Credit for prior service of a person who becomes a member of the 1977 fund under this subsection shall be determined under section 18 or 18.1 of this chapter. No service credit beyond that allowed under section 18 or 18.1 of this chapter may be recognized under the 1977 fund.

(b) If a unit did not establish a 1937 fund for its firefighters, the unit may participate in the public employees' retirement fund or it may participate in the 1977 fund. If a unit established a 1937 fund for its firefighters, the unit is and shall remain a participant in the 1977 fund.

(c) A unit that:

- (1) has not established a pension fund for its firefighters; or
- (2) is participating in the public employees' retirement fund under subsection (b);

may participate in the 1977 fund upon approval by the fiscal body, notwithstanding IC 5-10.3-6-8. A unit that participates in the 1977 fund under this subsection must comply with section 21 of this chapter. However, if a firefighter is a member of the public employees' retirement fund, the firefighter may continue as a member of that fund instead of the 1977 fund.

As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.313-1989, SEC.1; P.L.213-1995, SEC.6; P.L.236-1996, SEC.6; P.L.101-1998, SEC.1; P.L.195-1999, SEC.32.

IC 36-8-8-4

Creation of fund; management by PERF board; fund advisory committee; membership; term

Sec. 4. (a) There is established a police officers' and firefighters' pension and disability fund to be known as the 1977 fund. The 1977 fund consists of fund member and employer contributions, plus the earnings on them, to be used to make benefit payments to fund members and their survivors in the amounts and under the conditions specified in this chapter.

(b) The board of trustees of the public employees' retirement fund (referred to in this chapter as the "PERF board") shall administer the 1977 fund, which may be commingled with the public employees' retirement fund for investment purposes. All actuarial data shall be computed on the total membership of the fund, and the cost of

participation is the same for all employers in the fund. The fund member and employer contributions shall be recorded separately for each employer.

(c) The 1977 fund advisory committee, referred to as the committee, is established. The PERF board shall consult with the committee on matters pertaining to the administration of this chapter and IC 5-10.3-11. The committee shall consist of the following members appointed by the governor every two (2) years for a term of two (2) years:

- (1) Two (2) firefighters:
 - (A) each of whom must be an active or retired member of the 1937 fund or the 1977 fund; and
 - (B) neither of whom may be in an upper level policymaking position.
- (2) Two (2) police officers:
 - (A) each of whom must be an active or retired member of the 1925 fund, the 1953 fund, or the 1977 fund; and
 - (B) neither of whom may be in an upper level policymaking position.
- (3) Two (2) members, each of whom must be an executive of an employer.
- (4) Two (2) members, each of whom must be a member of the legislative body of an employer.

The term of each member begins on July 1 following appointment and continues until his successor is qualified. A member of the committee who no longer holds the position that qualified him for appointment under subdivision (1), (2), (3), or (4) forfeits his membership on the committee. The governor shall appoint a person to fill a vacancy on the committee for the remainder of the unexpired term.

(d) Each member of the committee who is not a state employee is entitled to reimbursement for expenses actually incurred in connection with the member's duties. Such a member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as approved by the PERF board.

As added by Acts 1981, P.L. 309, SEC. 59. Amended by P.L. 201-1984, SEC. 1; P.L. 342-1985, SEC. 5; P.L. 119-2000, SEC. 8.

IC 36-8-8-5

PERF board; powers and duties; appeals; confidentiality of fund records

Sec. 5. (a) The PERF board shall:

- (1) determine eligibility for and make payments of benefits, except as provided in section 12 of this chapter;
 - (2) in accordance with the powers and duties granted it in IC 5-10.3-3-7, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6, administer the 1977 fund; and
 - (3) provide by rule for the implementation of this chapter.
- (b) A determination by the PERF board may be appealed under

the procedures in IC 4-21.5.

(c) The powers and duties of the director and the actuary of the PERF board, the treasurer of state, the attorney general, and the auditor of state, with respect to the 1977 fund, are those specified in IC 5-10.3-3 and IC 5-10.3-4.

(d) The PERF board may hire additional personnel, including hearing officers, to assist it in the implementation of this chapter.

(e) The 1977 fund records of individual members and membership information are confidential, except for the name and years of service of a 1977 fund member.

As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.5-1988, SEC.219; P.L.5-1990, SEC.21; P.L.94-2004, SEC.8.

IC 36-8-8-6

Employer contributions

Sec. 6. (a) Each employer shall annually on March 31, June 30, September 30, and December 31, for the calendar quarters ending on those dates, pay into the 1977 fund an amount determined by the PERF board:

- (1) for administration expenses; and
- (2) sufficient to maintain level cost funding during the period of employment on an actuarial basis for members hired after April 30, 1977.

(b) If an employer fails to make the payments required by subsection (a) or fails to send the fund members' contributions required by section 8(a) of this chapter, the amount payable, on request of the PERF board, may be withheld by the auditor of state from money payable to the employer and transferred to the fund. In the alternative, the amount payable may be recovered in the circuit or superior court of the county in which the employer is located, in an action by the state on the relation of the PERF board, prosecuted by the attorney general.

As added by Acts 1981, P.L.309, SEC.59. Amended by Acts 1982, P.L.33, SEC.39.

IC 36-8-8-7

Membership in fund

Sec. 7. (a) Except as provided in subsections (d), (e), (f), (g), and (h):

- (1) a police officer; or
- (2) a firefighter;

who is less than thirty-six (36) years of age and who passes the baseline statewide physical and mental examinations required under section 19 of this chapter shall be a member of the 1977 fund and is not a member of the 1925 fund, the 1937 fund, or the 1953 fund.

(b) A police officer or firefighter with service before May 1, 1977, who is hired or rehired after April 30, 1977, may receive credit under this chapter for service as a police officer or firefighter prior to entry into the 1977 fund if the employer who rehires him chooses to contribute to the 1977 fund the amount necessary to amortize his

prior service liability over a period of not more than forty (40) years, the amount and the period to be determined by the PERF board. If the employer chooses to make the contributions, the police officer or firefighter is entitled to receive credit for his prior years of service without making contributions to the 1977 fund for that prior service. In no event may a police officer or firefighter receive credit for prior years of service if the police officer or firefighter is receiving a benefit or is entitled to receive a benefit in the future from any other public pension plan with respect to the prior years of service.

(c) Except as provided in section 18 of this chapter, a police officer or firefighter is entitled to credit for all years of service after April 30, 1977, with the police or fire department of an employer covered by this chapter.

(d) A police officer or firefighter with twenty (20) years of service does not become a member of the 1977 fund and is not covered by this chapter, if he:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981); and
- (3) is rehired after April 30, 1977, by the same employer.

(e) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if he:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981);
- (3) was rehired after April 30, 1977, but before February 1, 1979; and
- (4) was made, before February 1, 1979, a member of a 1925, 1937, or 1953 fund.

(f) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if he:

- (1) was hired by the police or fire department of a unit before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981);
- (3) is rehired by the police or fire department of another unit after December 31, 1981; and
- (4) is made, by the fiscal body of the other unit after December 31, 1981, a member of a 1925, 1937, or 1953 fund of the other unit.

If the police officer or firefighter is made a member of a 1925, 1937, or 1953 fund, he is entitled to receive credit for all his years of service, including years before January 1, 1982.

(g) As used in this subsection, "emergency medical services" and "emergency medical technician" have the meanings set forth in IC 16-18-2-110 and IC 16-18-2-112. A firefighter who:

- (1) is employed by a unit that is participating in the 1977 fund;
- (2) was employed as an emergency medical technician by a political subdivision wholly or partially within the department's jurisdiction;

- (3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and
- (4) ceased employment with the political subdivision and was hired by the unit's fire department due to the reorganization of emergency medical services within the department's jurisdiction;

shall participate in the 1977 fund. A firefighter who participates in the 1977 fund under this subsection is subject to sections 18 and 21 of this chapter.

(h) A police officer or firefighter does not become a member of the 1977 fund and is not covered by this chapter if the individual was appointed as:

- (1) a fire chief under a waiver under IC 36-8-4-6(c); or
- (2) a police chief under a waiver under IC 36-8-4-6.5(c);

unless the executive of the unit requests that the 1977 fund accept the individual in the 1977 fund and the individual previously was a member of the 1977 fund.

(i) A police matron hired or rehired after April 30, 1977, and before July 1, 1996, who is a member of a police department in a second or third class city on March 31, 1996, is a member of the 1977 fund.

(j) A park ranger who:

- (1) completed at least the number of weeks of training at the Indiana law enforcement academy or a comparable law enforcement academy in another state that were required at the time the park ranger attended the Indiana law enforcement academy or the law enforcement academy in another state;
- (2) graduated from the Indiana law enforcement academy or a comparable law enforcement academy in another state; and
- (3) is employed by the parks department of a city having a population of more than one hundred twenty thousand (120,000) but less than one hundred fifty thousand (150,000);

is a member of the fund.

As added by Acts 1981, P.L.309, SEC.59. Amended by Acts 1981, P.L.182, SEC.9; Acts 1982, P.L.33, SEC.40; P.L.365-1983, SEC.1; P.L.202-1984, SEC.1; P.L.38-1986, SEC.6; P.L.55-1987, SEC.5; P.L.3-1990, SEC.133; P.L.4-1990, SEC.18; P.L.4-1992, SEC.44; P.L.2-1993, SEC.204; P.L.213-1995, SEC.7; P.L.236-1996, SEC.7; P.L.43-1997, SEC.7; P.L.22-1998, SEC.17; P.L.246-2001, SEC.17.

IC 36-8-8-8

Employee contributions; lump sum withdrawal on termination of employment

Sec. 8. (a) Each fund member shall contribute during the period of his employment or for thirty-two (32) years, whichever is shorter, an amount equal to six percent (6%) of the salary of a first class patrolman or firefighter. However, the employer may pay all or a part of the contribution for the member. The amount of the contribution, other than contributions paid on behalf of a member, shall be deducted each pay period from each fund member's salary by the

disbursing officer of the employer. The employer shall send to the PERF board each year on March 31, June 30, September 30, and December 31, for the calendar quarters ending on those dates, a certified list of fund members and a warrant issued by the employer for the total amount deducted for fund members' contributions.

(b) If a fund member ends his employment other than by death or disability before he completes twenty (20) years of active service, the PERF board shall return to him in a lump sum his contributions plus interest as determined by the PERF board. If the fund member returns to service, he is entitled to credit for the years of service for which his contributions were refunded if he repays the amount refunded to him in either a lump sum or a series of payments determined by the PERF board.

As added by Acts 1981, P.L.309, SEC.59. Amended by Acts 1981, P.L.182, SEC.10; P.L.312-1989, SEC.4.

IC 36-8-8-9

Conversion from prior fund

Sec. 9. (a) This section applies to all police officers and firefighters who converted their benefits under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were repealed September 1, 1981).

(b) A police officer or firefighter who converted his benefits from a 1925, 1937, or 1953 fund to the benefits and conditions of this chapter is not entitled to receive any benefits from the original fund. However, he is entitled to credit for all years of service for which he would have received credit before his conversion in that original fund.

(c) A police officer or firefighter who:

- (1) converted his benefits from a 1925, 1937, or 1953 fund;
- (2) retired or became disabled on or before June 30, 1998; and
- (3) is entitled to receive benefits provided under this chapter based on the eligibility requirements of this chapter;

shall be treated as a member of this fund for purposes of paying his benefits from the 1977 fund effective for benefits paid on or after October 1, 1998. Prior to October 1, 1998, he remains a member of the original fund entitled to receive only the benefits provided under this chapter based on the eligibility requirements of this chapter.

(d) A police officer or firefighter who:

- (1) converted his benefits from a 1925, 1937 or 1953 fund;
- (2) who did not retire or become disabled on or before June 30, 1998; and
- (3) who is entitled to receive benefits provided under this chapter based on the eligibility requirements of this chapter;

remains a member of that original fund but is entitled to receive only the benefits provided under this chapter and based on the eligibility requirements of this chapter.

(e) A police officer or firefighter who converted shall contribute six percent (6%) of the salary of a first class patrolman or firefighter to the 1925, 1937, or 1953 fund. This amount shall be deducted from his salary each pay period by the disbursing officer of the employer.

Contributions under this subsection may not be refunded.
As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.3-1990, SEC.134; P.L.22-1998, SEC.18.

IC 36-8-8-10

Eligibility for retirement; initiation of benefits; election to receive actuarially reduced benefits

Sec. 10. (a) A fund member is eligible for retirement after he has completed twenty (20) years of active service.

(b) Unless the member is receiving benefits under subsection (c), unreduced benefits to a retired fund member begin the date:

- (1) the fund member becomes fifty-two (52) years of age; or
- (2) on which the fund member retires;

whichever is later. Benefit payments to a retired fund member under this subsection begin on the first day of the month on or after the date he reaches fifty-two (52) years of age or on which he retires, whichever is later.

(c) A retired member may elect to receive actuarially reduced benefits that begin the date:

- (1) the fund member becomes fifty (50) years of age; or
- (2) on which the fund member retires;

whichever is later. Benefit payments to a retired fund member under this subsection begin on the first day of the month on or after the day the member reaches fifty (50) years of age or on which the member retires, whichever is later.

(d) If a fund member:

- (1) becomes fifty-two (52) years of age in the case of unreduced benefits or fifty (50) years of age in the case of reduced benefits; or
- (2) retires on a date other than on the first day of the month;

the amount due the fund member for the initial partial monthly benefit is payable together with the regular monthly benefit on the first of the month following the date the fund member becomes fifty-two (52) or fifty (50) years of age, respectively, or retires, whichever is later.

As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.232-1997, SEC.1; P.L.22-1998, SEC.19.

IC 36-8-8-11

Computation of retirement benefits; actuarially reduced benefits

Sec. 11. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) Each fund member who qualifies for a retirement benefit payment under section 10(b) of this chapter is entitled to receive a monthly benefit equal to fifty percent (50%) of the monthly salary of a first class patrolman or firefighter in the year the member ended his active service plus:

- (1) for a member who retires before January 1, 1986, two percent (2%) of that salary for each full year of active service; or

(2) for a member who retires after December 31, 1985, one percent (1%) of that salary for each six (6) months of active service;

over twenty (20) years, to a maximum of twelve (12) years.

(c) Each fund member who qualifies for a retirement benefit payment under section 10(c) of this chapter is entitled to receive a monthly benefit equal to fifty percent (50%) of the monthly salary of a first class patrolman or firefighter in the year the member ended his active service plus one percent (1%) of that salary for each six (6) months of active service over twenty (20) years, to a maximum of twelve (12) years, all actuarially reduced for each month (if any) of benefit payments prior to fifty-two (52) years of age, by a factor established by the fund's actuary from time to time.

As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.342-1985, SEC.6; P.L.55-1989, SEC.62; P.L.22-1998, SEC.20.

IC 36-8-8-12

Benefits for members with covered impairments; retirement benefits for disabled members less than 52 years of age

Sec. 12. (a) Benefits paid under this section are subject to sections 2.5 and 2.6 of this chapter.

(b) If an active fund member has a covered impairment, as determined under sections 12.3 through 13.1 of this chapter, the member is entitled to receive the benefit prescribed by section 13.3 or 13.5 of this chapter. A member who has had a covered impairment and returns to active duty with the department shall not be treated as a new applicant seeking to become a member of the 1977 fund.

(c) If a retired fund member who has not yet reached the member's fifty-second birthday is found by the PERF board to be permanently or temporarily unable to perform all suitable work for which the member is or may be capable of becoming qualified, the member is entitled to receive during the disability the retirement benefit payments payable at fifty-two (52) years of age. During a reasonable period in which a disabled fund member is becoming qualified for suitable work, the member may continue to receive disability benefit payments. However, benefits payable for disability under this subsection are reduced by amounts for which the fund member is eligible from:

(1) a plan or policy of insurance providing benefits for loss of time because of disability;

(2) a plan, fund, or other arrangement to which the fund member's employer has contributed or for which the fund member's employer has made payroll deductions, including a group life policy providing installment payments for disability, a group annuity contract, or a pension or retirement annuity plan other than the fund established by this chapter;

(3) the federal Social Security Act (42 U.S.C. 401 et seq.), the Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States Department of Veterans Affairs, or another federal, state, local, or other governmental agency;

- (4) worker's compensation payable under IC 22-3; and
- (5) a salary or wage, including overtime and bonus pay and extra or additional remuneration of any kind, the fund member receives or is entitled to receive from the member's employer.

For the purposes of this subsection, a retired fund member is considered eligible for benefits from subdivisions (1) through (5) whether or not the member has made application for the benefits.

(d) Notwithstanding any other law, a plan, policy of insurance, fund, or other arrangement:

(1) delivered, issued for delivery, amended, or renewed after April 9, 1979; and

(2) described in subsection (c)(1) or (c)(2);

may not provide for a reduction or alteration of benefits as a result of benefits for which a fund member may be eligible from the 1977 fund under subsection (c).

(e) Time spent receiving disability benefits is considered active service for the purpose of determining retirement benefits until the fund member has a total of twenty (20) years of service.

(f) A fund member who is receiving disability benefits under this chapter shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

As added by Acts 1981, P.L.309, SEC.59. Amended by Acts 1981, P.L.182, SEC.11; P.L.28-1988, SEC.116; P.L.1-1989, SEC.73; P.L.55-1989, SEC.63; P.L.311-1989, SEC.6; P.L.1-1991, SEC.211; P.L.4-1992, SEC.45; P.L.213-1995, SEC.8; P.L.22-1998, SEC.21; P.L.118-2000, SEC.23.

IC 36-8-8-12.3

Covered impairments; hearings; inclusions; Class 3 excludable condition; determination

Sec. 12.3. (a) Upon a request from a fund member or from the safety board of the appropriate police or fire department, the local board shall conduct a hearing under section 12.7 of this chapter to determine whether the fund member has a covered impairment.

(b) A covered impairment is an impairment that permanently or temporarily makes a fund member unable to perform the essential function of the member's duties, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, with the police or fire department. However, a covered impairment does not include an impairment:

- (1) resulting from an intentionally self-inflicted injury or attempted suicide while sane or insane;
- (2) resulting from the fund member's commission or attempted commission of a felony;
- (3) that begins within two (2) years after a fund member's entry or reentry into active service with the department and that was caused or contributed to by a mental or physical condition that manifested itself before the fund member entered or reentered active service. Notwithstanding this subdivision, a fund member may not be required to satisfy more than one (1) such two (2)

year period for the same mental or physical condition; or
(4) that is occasioned, in whole or in part, by the fund member currently engaging (as defined in 29 CFR 1630.3, Appendix) in any of the following:

(A) Use of a controlled substance (as defined in the Controlled Substances Act (21 U.S.C. 812)).

(B) Unlawful use of a prescription drug.

(c) Notwithstanding subsection (b), this subsection applies to the following:

(1) A fund member who is hired after March 1, 1992.

(2) A fund member who was admitted to the 1977 fund after having been covered by another public pension plan as a police officer or firefighter.

For a fund member who is determined by the PERF board to have a Class 3 excludable condition under IC 36-8-8-13.6, a covered impairment does not include an impairment that would be classified as a Class 3 impairment that begins at any time after the fund member's entry or reentry into active service with the department and is related in any manner to the Class 3 excludable condition.

(d) If the local board determines that a covered impairment exists, the chief of the police or fire department shall submit to the local board written determinations of the following:

(1) Whether there is suitable and available work on the appropriate department for which the fund member is or may be capable of becoming qualified, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

(2) For a fund member covered by sections 12.5 and 13.5 of this chapter, the fund member's years of service with the department.

As added by P.L.311-1989, SEC.7. Amended by P.L.4-1992, SEC.46; P.L.213-1995, SEC.9; P.L.231-1997, SEC.5.

IC 36-8-8-12.4

Election of coverage by IC 36-8-8-12.5 and IC 36-8-8-13.5

Sec. 12.4. A fund member who is hired for the first time before January 1, 1990, may choose to be covered by sections 12.5 and 13.5 of this chapter (instead of section 13.3 of this chapter) if the fund member files an election with the PERF board before January 1, 1991. However, an election may not be filed after the fund member has a covered impairment. An election filed under this section is irrevocable.

As added by P.L.311-1989, SEC.8.

IC 36-8-8-12.5

Determination of class of impairment

Sec. 12.5. (a) This section applies only to a fund member who:

(1) is hired for the first time after December 31, 1989;

(2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or

(3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the fund member is on duty.

(B) A personal injury that occurs while the fund member is off duty and is responding to:

(i) an offense or a reported offense, in the case of a police officer; or

(ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.

(C) An occupational disease (as defined in IC 22-3-7-10). A covered impairment that is included within this clause and subdivision (2) shall be considered a Class 1 impairment.

(D) A health condition caused by an exposure risk disease that results in a presumption of disability or death incurred in the line of duty under IC 5-10-13.

(2) Whether the fund member has a Class 2 impairment. A Class 2 impairment is a covered impairment that is a duty related disease. A duty related disease means a disease arising out of the fund member's employment. A disease shall be considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(A) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(B) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(C) the disease can be traced to the fund member's employment as the proximate cause.

(3) Whether the fund member has a Class 3 impairment. A Class 3 impairment is a covered impairment that is not a Class 1 impairment or a Class 2 impairment.

As added by P.L.311-1989, SEC.9. Amended by P.L.213-1995, SEC.10; P.L.185-2002, SEC.11.

IC 36-8-8-12.7

Hearings; notice; procedure; discovery; determinations; appeals; records; determination whether disability in line of duty

Sec. 12.7. (a) This section applies to hearings conducted by local boards concerning determinations of impairment under this chapter or of disability under IC 36-8-5-2(g), IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

(b) At least five (5) days before the hearing, the local board shall give notice to the fund member and the safety board of the time, date, and place of the hearing.

(c) The local board must hold a hearing not more than ninety (90) days after the fund member requests the hearing.

(d) At the hearing, the local board shall permit the fund member and the safety board to:

- (1) be represented by any individual;
- (2) through witnesses and documents, present evidence;
- (3) conduct cross-examination; and
- (4) present arguments.

(e) At the hearing, the local board shall require all witnesses to be examined under oath, which may be administered by a member of the local board.

(f) The local board shall, at the request of the fund member or the safety board, issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(g) The local board shall have the hearing recorded so that a transcript may be made of the proceedings.

(h) After the hearing, the local board shall make its determinations, including findings of fact, in writing and shall provide copies of its determinations to the fund member and the safety board not more than thirty (30) days after the hearing.

(i) If the local board:

- (1) does not hold a hearing within the time required under subsection (c); or
- (2) does not issue its determination within the time required under subsection (h);

the fund member shall be considered to be totally impaired for purposes of section 13.5 of this chapter and, if the issue before the local board concerns the class of the member's impairment, the member shall be considered to have a Class 1 impairment.

(j) The local board may on its own motion issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(k) At the hearing, the local board may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on the basis of evidentiary privilege recognized by the courts.

(l) At the hearing, the local board may request the testimony of witnesses and the production of documents.

(m) If a subpoena or order is issued under this section, the party seeking the subpoena or order shall serve it in accordance with the Indiana Rules of Trial Procedure. However, if the subpoena or order

is on the local board's own motion, the sheriff of the county in which the subpoena or order is to be served shall serve it. A subpoena or order under this section may be enforced in the circuit or superior court of the county in which the subpoena or order is served.

(n) With respect to a hearing conducted for purposes of determining disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5, the determination of the local board after a hearing is final and may be appealed to the court.

(o) With respect to a hearing conducted for purposes of determining impairment or class of impairment under this chapter, the fund member may appeal the local board's determinations. An appeal under this subsection:

- (1) must be made in writing;
- (2) must state the class of impairment and the degree of impairment that is claimed by the fund member;
- (3) must include a written determination by the chief of the police or fire department stating that there is no suitable and available work; and
- (4) must be filed with the local board and the PERF board's director no later than thirty (30) days after the date on which the fund member received a copy of the local board's determinations.

(p) To the extent required by the Americans with Disabilities Act, the transcripts, records, reports, and other materials generated as a result of a hearing, review, or appeal conducted to determine an impairment under this chapter or a disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5 must be:

- (1) retained in the separate medical file created for the member; and
- (2) treated as a confidential medical record.

(q) If a local board determines that a fund member described in section 13.3(a) of this chapter has a covered impairment, the local board shall also make a recommendation to the 1977 fund advisory committee concerning whether the covered impairment is an impairment described in section 13.3(c) of this chapter or whether it is an impairment described in section 13.3(d) of this chapter. The local board shall forward its recommendation to the 1977 fund advisory committee.

(r) The 1977 fund advisory committee shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of whether the disability is in the line of duty or not in the line of duty. The 1977 fund advisory committee shall notify the local board, the safety board, and the fund member of its initial determination.

(s) The fund member, the safety board, or the local board may object in writing to the 1977 fund advisory committee's initial determination under subsection (r) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the 1977 fund advisory committee's initial determination

becomes final. If a timely written objection is filed, the 1977 fund advisory committee shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

As added by P.L.311-1989, SEC.10. Amended by P.L.5-1990, SEC.22; P.L.4-1992, SEC.47; P.L.22-1998, SEC.22; P.L.195-1999, SEC.33; P.L.118-2000, SEC.24.

IC 36-8-8-13 Repealed

(Repealed by P.L.1-1991, SEC.212.)

IC 36-8-8-13.1

Submission of determination of local board and safety board to PERF director; medical examination; initial determination; objections; final order; appeals

Sec. 13.1. (a) If:

- (1) the local board has determined under this chapter that a covered impairment exists and the safety board has determined that there is no suitable and available work within the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act; or
- (2) the fund member has filed an appeal under section 12.7(o) of this chapter;

the local board shall submit the local board's determinations and the safety board's determinations to the PERF board's director.

(b) After the PERF board's director receives the determinations, the fund member must submit to an examination by a medical authority selected by the PERF board. The authority shall determine if there is a covered impairment. With respect to a fund member who is covered by sections 12.5 and 13.5 of this chapter, the authority shall determine the degree of impairment. The PERF board shall adopt rules under IC 4-22-2 to establish impairment standards, such as the impairment standards contained in the United States Department of Veterans Affairs Schedule for Rating Disabilities. The report of the examination shall be submitted to the PERF board's director. If a fund member refuses to submit to an examination, the authority may find that no impairment exists.

(c) The PERF board's director shall review the medical authority's report and the local board's determinations and issue an initial determination within sixty (60) days after receipt of the local board's determinations. The PERF board's director shall notify the local board, the safety board, and the fund member of the initial determination. The following provisions apply if the PERF board's director does not issue an initial determination within sixty (60) days and if the delay is not attributable to the fund member or the safety board:

- (1) In the case of a review initiated under subsection (a)(1):
 - (A) the determinations of the local board and the chief of the police or fire department are considered to be the initial

determination; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the initial determination.

(d) The fund member, the safety board, or the local board may object in writing to the director's initial determination within fifteen (15) days after the determination is issued. If no written objection is filed, the initial determination becomes the final order of the PERF board. If a timely written objection is filed, the PERF board shall issue the final order after a hearing. The final order shall be issued not later than one hundred eighty (180) days after the date of receipt of the local board's determination. The following provisions apply if a final order is not issued within one hundred eighty (180) days and if the delay is not attributable to the fund member or the chief of the police or fire department:

(1) In the case of a review initiated under subsection (a)(1):

(A) the determinations of the local board and the chief of the police or fire department are considered to be the final order; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the final order.

(e) If the PERF board approves the director's initial determination, then the PERF board shall issue a final order adopting the initial determination. The local board and the chief of the police or fire department shall comply with the initial determination. If the PERF board does not approve the initial determination, the PERF board may receive additional evidence on the matter before issuing a final order.

(f) Appeals of the PERF board's final order may be made under IC 4-21.5.

(g) The transcripts, records, reports, and other materials compiled under this section must be retained in accordance with the procedures specified in section 12.7(p) of this chapter.

As added by P.L.1-1991, SEC.213. Amended by P.L.4-1992, SEC.48; P.L.195-1999, SEC.34.

IC 36-8-8-13.3

Disability benefits

Sec. 13.3. (a) This section applies only to a fund member who:

(1) is hired for the first time before January 1, 1990; and

(2) does not choose coverage by sections 12.5 and 13.5 of this chapter under section 12.4 of this chapter.

This section does not apply to a fund member described in section 12.3(c)(2) of this chapter.

(b) A fund member:

- (1) who became disabled before July 1, 2000;
- (2) is determined to have a covered impairment; and
- (3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(c) Except as otherwise provided in this subsection, a fund member:

- (1) who becomes disabled after July 1, 2000;
- (2) who is determined to have a covered impairment that is:
 - (A) the direct result of:
 - (i) a personal injury that occurs while the fund member is on duty;
 - (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer, or an emergency or reported emergency for which the fund member is trained, in the case of a firefighter; or
 - (iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B); or
 - (B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:
 - (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;
 - (ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and
 - (iii) the disease can be traced to the fund member's employment as the proximate cause); and
- (3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52)

years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(d) Except as otherwise provided in this subsection, a fund member:

- (1) who becomes disabled after July 1, 2000;
- (2) who is determined to have a covered impairment that is not a covered impairment described in subsection (c)(2)(A) or (c)(2)(B); and
- (3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the federal Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(e) Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

- (1) has had a covered impairment;
- (2) recovers and returns to active service with the department; and
- (3) within two (2) years after returning to active service has an impairment that except for section 12.3 of this chapter would be a covered impairment;

is entitled to the benefit under this subsection if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under section 15 of this chapter that would have been applicable during the member's period of reemployment.

As added by P.L.311-1989, SEC.12. Amended by P.L.4-1992, SEC.49; P.L.213-1995, SEC.11; P.L.22-1998, SEC.23; P.L.118-2000, SEC.25.

IC 36-8-8-13.5

Applicability to certain fund members; disability benefits for classes of impairment

Sec. 13.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 12.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) A fund member who is determined to have a Class 1 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the

Americans with Disabilities Act, is entitled to a monthly base benefit equal to forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(c) A fund member who is determined to have a Class 2 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to twenty-two percent (22%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment plus one-half percent (0.5%) of that salary for each year of service, up to a maximum of thirty (30) years of service.

(d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to the product of the member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(e) For applicants hired after March 1, 1992, or described in section 12.3(c)(2) of this chapter, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to the following benefits instead of benefits provided under subsection (d):

(1) If the fund member did not have a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund, the fund member is entitled to a monthly base benefit equal to the product of the member's years of service, not to exceed thirty (30) years of service, multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(2) Except as provided in subdivision (5), a fund member is entitled to receive the benefits set forth in subdivision (1) if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund;

(B) the fund member has a Class 3 impairment that is not related in any manner to the Class 3 excludable condition described in clause (A); and

(C) the Class 3 impairment described in clause (B) occurs after the fund member has completed four (4) years of service with the employer after the date the fund member

entered or reentered the fund.

(3) Except as provided in subdivision (5), a fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment occurs before the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.

(4) A fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment is related in any manner to the Class 3 excludable condition.

(5) If, during the first four (4) years of service with the employer:

(A) a fund member with a Class 3 excludable condition is determined to have a Class 3 impairment; and

(B) the Class 3 impairment is attributable to an accidental injury that is not related in any manner to the fund member's Class 3 excludable condition;

the member is entitled to receive the benefits provided in subdivision (1) with respect to the accidental injury. For purposes of this subdivision, the local board shall make the initial determination of whether an impairment is attributable to an accidental injury. The local board shall forward the initial determination to the director of the PERF board for a final determination by the PERF board or the PERF board's designee.

(f) If a fund member is entitled to a monthly base benefit under subsection (b), (c), (d), or (e), the fund member is also entitled to a monthly amount that is no less than ten percent (10%) and no greater than forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment. The additional monthly amount shall be determined by the PERF medical authority based on the degree of impairment.

(g) Benefits for a Class 1 impairment are payable until the fund member becomes fifty-two (52) years of age. Benefits for a Class 2 and a Class 3 impairment are payable:

(1) for a period equal to the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or

(2) until the member becomes fifty-two (52) years of age if the member's benefit is:

(A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the

year of the local board's determination of impairment; or
(B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.

(h) Upon becoming fifty-two (52) years of age, a fund member with a Class 1 or Class 2 impairment is entitled to receive the retirement benefit payable to a fund member with:

- (1) twenty (20) years of service; or
- (2) the total years of service and salary, as of the year the member becomes fifty-two (52) years of age, that the fund member would have earned if the fund member had remained in active service until becoming fifty-two (52) years of age;

whichever is greater.

(i) Upon becoming fifty-two (52) years of age, a fund member who is receiving or has received a Class 3 impairment benefit that is:

- (1) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or
- (2) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service;

is entitled to receive the retirement benefit payable to a fund member with twenty (20) years of service.

(j) Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

- (1) has had a covered impairment;
- (2) recovers and returns to active service with the department; and
- (3) within two (2) years after returning to active service has an impairment that, except for section 12.3(b)(3) of this chapter, would be a covered impairment;

is entitled to the benefit under this subsection if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under section 15 of this chapter that would have been applicable during the member's period of reemployment.

As added by P.L.311-1989, SEC.13. Amended by P.L.4-1992, SEC.50; P.L.213-1995, SEC.12; P.L.22-1998, SEC.24.

IC 36-8-8-13.6

"Class 3 excludable condition" defined; rules; recording and retaining listing of condition

Sec. 13.6. (a) As used in this chapter, "Class 3 excludable condition" means a condition that is included on the list of excludable medical conditions established by the PERF board under

subsection (b).

(b) The PERF board shall adopt rules under IC 4-22-2 to establish a list of excludable medical conditions.

(c) To the extent required by the Americans with Disabilities Act, the PERF board shall record and retain the listing of a fund member's Class 3 excludable condition in the fund member's confidential medical file.

As added by P.L.4-1992, SEC.51.

IC 36-8-8-13.7

Review of member's impairment; hearing; costs of medical examination

Sec. 13.7. (a) No more than once every twelve (12) months after the final determination of covered impairment under this chapter:

(1) a petition for review of the fund member's impairment may be filed with the local board by the fund member, the safety board, or the PERF board; or

(2) the local board may on its own motion seek a review of a fund member's impairment.

(b) The review may include a review of whether a covered impairment continues to exist, whether the degree of impairment has changed, and any other matter considered appropriate by the local board.

(c) The local board shall conduct a hearing under section 12.7 of this chapter to determine the matters raised in the petition for review. The local board's determination shall be submitted to the PERF board, and the procedures specified in section 13.1 of this chapter apply.

(d) The costs of a medical examination required by the local board shall be paid by the party who filed the petition for review.

As added by P.L.311-1989, SEC.14. Amended by P.L.1-1991, SEC.214.

IC 36-8-8-13.8

Members dying other than in line of duty after August 31, 1982

Sec. 13.8. (a) This section applies to an active or retired member who dies other than in the line of duty (as defined in section 14.1 of this chapter) after August 31, 1982.

(b) If a fund member dies while receiving retirement or disability benefits, the following apply:

(1) Except as otherwise provided in this subsection, each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

(A) until the child becomes eighteen (18) years of age; or

(B) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon

the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under clause (B), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child.

(2) The member's surviving spouse is entitled to a monthly benefit equal to sixty percent (60%) of the fund member's monthly benefit during the spouse's lifetime. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

If a fund member dies while receiving retirement or disability benefits, there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime.

(c) Except as otherwise provided in this subsection, if a fund member dies while on active duty or while retired and not receiving benefits, the member's children and the member's spouse, or the member's parent or parents are entitled to receive a monthly benefit determined under subsection (b). If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years of age, the benefit is computed as if the member:

- (1) did have twenty (20) years of service; and
- (2) was fifty-two (52) years of age.

As added by P.L.118-2000, SEC.26.

IC 36-8-8-13.9

Members dying in line of duty before September 1, 1982

Sec. 13.9. (a) This section applies to an active member who died in the line of duty (as defined in section 14.1 of this chapter) before September 1, 1982.

(b) Except as otherwise provided in this subsection, if a fund member dies in the line of duty, the following apply:

- (1) Each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

(A) until the child becomes eighteen (18) years of age; or

(B) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under clause (B), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child. (2) The member's surviving spouse is entitled to a monthly benefit equal to sixty percent (60%) of the fund member's monthly benefit during the spouse's lifetime. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

If there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime.

(c) If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years of age, the benefit under subsection (b) is computed as if the member:

- (1) did have twenty (20) years of service; and
- (2) was fifty-two (52) years of age.

(d) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;
- or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a

surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

As added by P.L.118-2000, SEC.27. Amended by P.L.86-2003, SEC.8.

IC 36-8-8-14

Repealed

(Repealed by P.L.50-1984, SEC.13.)

IC 36-8-8-14.1

Members dying in line of duty after August 31, 1982

Sec. 14.1. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) This section applies to an active member who dies in the line of duty after August 31, 1982.

(c) If a fund member dies in the line of duty after August 31, 1982, the member's surviving spouse is entitled to a monthly benefit during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than the benefit payable to a member with twenty (20) years service at fifty-two (52) years of age. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(d) If a fund member dies in the line of duty, each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

(1) until the child reaches eighteen (18) years of age; or

(2) until the child reaches twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (2), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child.

(e) If there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner

specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime.

(f) If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years old, the benefit is computed as if the member:

- (1) did have twenty (20) years of service; and
- (2) was fifty-two (52) years of age.

(g) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from:

(1) any action that the member, in the member's capacity as a police officer:

- (A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
- (B) performs in the course of controlling or reducing crime or enforcing the criminal law; or

(2) any action that the member, in the member's capacity as a firefighter:

- (A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
- (B) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(h) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

As added by P.L.50-1984, SEC.14. Amended by P.L.196-1988, SEC.4; P.L.1-1989, SEC.74; P.L.55-1989, SEC.64; P.L.1-1993, SEC.247; P.L.52-1993, SEC.6; P.L.197-1993, SEC.6; P.L.1-1994, SEC.180; P.L.25-1994, SEC.11; P.L.231-1997, SEC.6; P.L.40-1997,

SEC.9; P.L.22-1998, SEC.25; P.L.195-1999, SEC.35; P.L.118-2000, SEC.28; P.L.62-2002, SEC.4; P.L.185-2002, SEC.12; P.L.86-2003, SEC.9.

IC 36-8-8-15

Cost of living adjustment

Sec. 15. Each year the PERF board shall determine if there has been an increase or decrease in the consumer price index (United States city average) prepared by the United States Department of Labor by comparing the arithmetic mean of the consumer price index for January, February, and March of that year with the arithmetic mean for the same three (3) months of the preceding year. If there has been an increase or a decrease, it shall be stated as a percentage of the arithmetic mean for the preceding three (3) month period. The percentage shall be rounded to the nearest one-tenth of one percent (0.1%) and may not exceed three percent (3%). A fund member's or survivor's monthly benefit, beginning with the July payment, shall be increased or decreased by an amount equal to the June payment times the percentage increase or decrease. However, a fund member's or survivor's monthly benefit may not be increased or decreased under this section until July of the year following the year of the first monthly benefit payment to the fund member or survivor. In computing a fund member's benefit, the increase or decrease is based only on those years for which the fund member was eligible for benefit payments under this chapter. A monthly benefit may not be reduced below the amount of the first monthly benefit received by the fund member or survivor.

As added by Acts 1981, P.L.309, SEC.59.

IC 36-8-8-16

Lump sum death benefit

Sec. 16. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) The heirs or estate of a fund member is entitled to receive at least:

- (1) one thousand five hundred dollars (\$1,500) upon the fund member's death before September 1, 1984;
- (2) three thousand dollars (\$3,000) upon the fund member's death after August 31, 1984, and before July 1, 1994;
- (3) six thousand dollars (\$6,000) upon the fund member's death after June 30, 1994, and before January 1, 1999; and
- (4) nine thousand dollars (\$9,000) upon the fund member's death after December 31, 1998.

As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.200-1984, SEC.6; P.L.55-1989, SEC.65; P.L.311-1989, SEC.15; P.L.169-1994, SEC.5; P.L.49-1998, SEC.8.

IC 36-8-8-17

Benefits exempt from judicial process; transfer prohibited; rollover to eligible retirement plan

Sec. 17. (a) The benefits of this chapter are exempt from attachment and garnishment and may not be seized, taken, or levied upon by any execution or process.

(b) Except as provided in subsection (c) and section 17.2 of this chapter, a person receiving a benefit under this chapter may not transfer, assign, or sell the benefit.

(c) Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the 1977 fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.10-1993, SEC.19; P.L.183-2003, SEC.2.

IC 36-8-8-17.2

Voluntary benefit deductions

Sec. 17.2. (a) Notwithstanding any other provision of this chapter, a person receiving a disability, retirement, or survivor monthly benefit under this chapter may, after June 30, 2004, authorize the PERF board to make a deduction from the benefit.

(b) An authorization for a deduction from a disability, retirement, or survivor monthly benefit paid under this chapter is valid only if all the following requirements are met:

(1) The authorization is:

(A) in writing;

(B) signed personally by the person receiving the benefit;

(C) revocable at any time by the person receiving the benefit upon written notice to the PERF board; and

(D) agreed to in writing by the PERF board.

(2) An executed copy of the authorization is delivered to the PERF board within ten (10) days after its execution.

(3) The deduction is made for a purpose described in subsection (c).

(c) A deduction under this section may be made for the purpose of paying any of the following:

(1) A premium on a policy of insurance for medical, surgical, hospitalization, dental, vision, long term care, or Medicare supplement coverage offered to retired fund members by the fund member's former employer, the state, or the PERF board.

(2) A pledge or contribution to a charitable or nonprofit organization.

(3) Dues payable by the person receiving the benefit to a labor organization of which the person is a member.

As added by P.L.183-2003, SEC.3.

IC 36-8-8-18

Credit for service prior to participation in 1977 fund; rollover distributions; trustee to trustee transfers

Sec. 18. (a) Except as provided in subsection (b), if a unit becomes a participant in the 1977 fund, credit for prior service by police officers (including prior service as a full-time, fully paid town marshal or full-time, fully paid deputy town marshal by a police officer employed by a metropolitan board of police commissioners) or by firefighters before the date of participation may be given by the PERF board only if:

(1) the unit contributes to the 1977 fund the amount necessary to amortize prior service liability over a period of not more than forty (40) years, the amount and period to be determined by the PERF board; and

(2) the police officers or firefighters pay, either in a lump sum or in a series of payments determined by the PERF board, the amount that they would have contributed if they had been members of the 1977 fund during their prior service.

If the requirements of subdivisions (1) and (2) are not met, a fund member is entitled to credit only for years of service after the date of participation.

(b) If a unit becomes a participant in the 1977 fund under section 3(c) of this chapter, or if a firefighter becomes a member of the 1977 fund under section 7(g) of this chapter, credit for prior service before the date of participation or membership shall be given by the PERF board as follows:

(1) For a member who will accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, the member will be given credit in the 1977 fund for one-third (1/3) of the member's years of participation in PERF as a police officer, a firefighter, or an emergency medical technician.

(2) For a member who will not accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, such prior service shall be given only if:

(A) The unit contributes to the 1977 fund the amount necessary to fund prior service liability amortized over a period of not more than ten (10) years. The amount of contributions must be based on the actual salary earned by a first class firefighter at the time the unit becomes a participant in the 1977 fund, or the firefighter becomes a member of the 1977 fund, or if no such salary designation exists, the actual salary earned by the firefighter. However, credit for prior service is limited to the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter reaches the earliest retirement age under the 1977 fund at the time of the member's date of participation in the 1977 fund. The limit on credit for prior service does not apply if the firefighter was a member of the 1937 fund or 1977 fund whose participation

was terminated due to the creation of a new fire protection district under IC 36-8-11-5 and who subsequently became a member of the 1977 fund. A firefighter who was a member of or reentered the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 is entitled to full credit for prior service in an amount equal to the firefighter's years of service before becoming a member of or reentering the 1977 fund. Service may only be credited for time as a full-time, fully paid firefighter or as an emergency medical technician under section 7(g) of this chapter.

(B) The amount the firefighter would have contributed if the firefighter had been a member of the 1977 fund during the firefighter's prior service must be fully paid and must be based on the firefighter's actual salary earned during that period before service can be credited under this section.

(C) Any amortization schedule for contributions paid under clause (A) and contributions to be paid under clause (B) must include interest at a rate determined by the PERF board.

(3) If, at the time a unit entered the 1977 fund, the unit contributed the amount required by subdivision (2) so that a fund member received the maximum prior service credit allowed by subdivision (2) and, at a later date, the earliest retirement age was lowered, the unit may contribute to the 1977 fund on the fund member's behalf an additional amount that is determined in the same manner as under subdivision (2) with respect to the additional prior service, if any, available as a result of the lower retirement age. If the unit pays the additional amount described in this subdivision in accordance with the requirements of subdivision (2), the fund member shall receive the additional service credit necessary for the fund member to retire at the lower earliest retirement age.

(c) This subsection applies to a unit that:

(1) becomes a participant in the 1977 fund under section 3(c) of this chapter; and

(2) is a fire protection district created under IC 36-8-11 that includes a township or a municipality that had a 1937 fund.

A firefighter who continues uninterrupted service with a unit covered by this subsection and who participated in the township or municipality 1937 fund is entitled to receive service credit for such service in the 1977 fund. However, credit for such service is limited to the amount accrued by the firefighter in the 1937 fund or the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter becomes fifty-five (55) years of age, whichever is less.

(d) The unit shall contribute into the 1977 fund the amount necessary to fund the amount of past service determined in accordance with subsection (c), amortized over a period not to exceed ten (10) years with interest at a rate determined by the PERF

board.

(e) If the township or municipality has accumulated money in its 1937 fund, any amount accumulated that exceeds the present value of all projected future benefits from the 1937 plan shall be paid by the township or municipality to the unit for the sole purpose of making the contributions determined in subsection (d).

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing permissive service credit under this chapter, a rollover of a distribution from any of the following:

- (1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.
- (2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.
- (3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.
- (4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing permissive service credit under this chapter, a trustee to trustee transfer from any of the following:

- (1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.
- (2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by Acts 1981, P.L.309, SEC.59. Amended by P.L.313-1989, SEC.2; P.L.4-1990, SEC.19; P.L.149-1992, SEC.1; P.L.101-1998, SEC.2; P.L.49-1998, SEC.9; P.L.61-2002, SEC.17.

IC 36-8-8-18.1

1977 fund participants previously covered in PERF or firefighters participating in 1977 fund; minimum benefit; transfer of contributions; reduction of contributions; credit for prior service

Sec. 18.1. (a) As used in this section, "police officer" includes a former full-time, fully paid town marshal or full-time, fully paid deputy town marshal who is employed as a police officer by a metropolitan board of police commissioners.

(b) If a unit becomes a participant in the 1977 fund and the unit previously covered police officers, firefighters, or emergency medical technicians in PERF, or if the employees of the unit become members of the 1977 fund under section 7(g) of this chapter, the following provisions apply:

- (1) A minimum benefit applies to members electing to transfer or being transferred to the 1977 fund from PERF. The minimum benefit, payable at age fifty-five (55), for such a member equals the actuarial equivalent of the vested retirement benefit payable to the member upon normal retirement under IC 5-10.2-4-1 as

of the day before the transfer, based solely on:

- (A) creditable service;
- (B) the average of the annual compensation; and
- (C) the amount credited to the annuity savings account;

of the transferring member as of the day before the transfer under IC 5-10.2 and IC 5-10.3.

(2) The PERF board shall transfer from PERF to the 1977 fund the amount credited to the annuity savings accounts and the present value of the retirement benefits payable at age sixty-five (65) attributable to the transferring members.

(3) The amount the unit and the member must contribute to the 1977 fund under section 18 of this chapter, if any service credit is to be given under that section, will be reduced by the amounts transferred to the 1977 fund by the PERF board under subdivision (2).

(4) Credit for prior service in PERF of a member as a police officer, a firefighter, or an emergency medical technician is waived in PERF. Any credit for that service under the 1977 fund shall only be given in accordance with section 18 of this chapter.

(5) Credit for prior service in PERF of a member, other than as a police officer, a firefighter, or an emergency medical technician, remains in PERF and may not be credited under the 1977 fund.

As added by P.L. 4-1990, SEC.20. Amended by P.L. 1-1991, SEC.215; P.L. 101-1998, SEC.3.

IC 36-8-8-19

Baseline statewide physical and mental examinations

Sec. 19. (a) The baseline statewide physical examination required by section 7(a) of this chapter shall be prescribed by the PERF board and shall be administered by the appointing authority, as determined by the local board, after the appointing authority extends a conditional offer for employment. The baseline statewide physical examination shall be administered by a licensed physician and must include all of the following:

- (1) A general medical history.
- (2) The tests identified in rules that shall be adopted by the PERF board under IC 4-22-2.

(b) The PERF board shall adopt minimum standards by rule under IC 4-22-2 that a police officer or firefighter must meet for the baseline statewide physical examination described in subsection (a). The baseline statewide physical examination and related standards must:

- (1) reflect the essential functions of the job;
- (2) be consistent with business necessity; and
- (3) be reviewed by the 1977 fund advisory board.

(c) The PERF board shall, in consultation with the commissioner of mental health, select the baseline statewide mental examination described in section 7(a) of this chapter. The standards for passing

the baseline statewide mental examination shall be determined by the local board. The baseline statewide mental examination and related standards must:

- (1) reflect the essential functions of the job;
- (2) be consistent with business necessity; and
- (3) be reviewed by the 1977 fund advisory board.

The purpose of the baseline statewide mental examination is to determine if the police officer or firefighter is mentally suitable to be a member of the department. The local board may designate a community mental health center or a managed care provider (as defined in IC 12-7-2-127(b)), a hospital, a licensed physician, or a licensed psychologist to administer the examination. However, the results of a baseline statewide mental examination shall be interpreted by a licensed physician or a licensed psychologist.

(d) The employer shall pay for no less than one-half (1/2) the cost of the examinations.

(e) Each local board shall name the physicians who will conduct the examinations under this section.

(f) If a local board determines that a candidate passes the local physical and mental standards, if any, established under IC 36-8-3.2-6, the baseline statewide physical examination described in subsection (a), and the baseline statewide mental examination described in subsection (c), the local board shall send the following to PERF:

- (1) Copies and certification of the results of the baseline statewide physical examination described in subsection (a).
- (2) Certification of the results of the physical agility examination required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5.
- (3) Certification of the results of the baseline statewide mental examination described in subsection (c).

(g) The PERF board or the PERF board's designee shall then determine whether the candidate passes the baseline statewide physical standards adopted under subsection (b). If the candidate passes the baseline statewide standards, the PERF board or the PERF board's designee shall also determine whether the candidate has a Class 3 excludable condition under section 13.6 of this chapter. The PERF board or the PERF board's designee shall retain the results of the examinations and all documents related to the examination until the police officer or firefighter retires or separates from the department.

(h) To the extent required by the federal Americans with Disabilities Act, the PERF board shall do the following:

- (1) Treat the medical transcripts, reports, records, and other material compiled under this section as confidential medical records.
- (2) Keep the transcripts, reports, records, and material described in subdivision (1) in separate medical files for each member.

(i) A local board may, at the request of an appointing authority or on the local board's own motion, issue subpoenas, discovery orders, and protective orders in accordance with the Indiana Rules of Trial

Procedure to facilitate the receipt of accurate and original documents necessary for the proper administration of this chapter. A subpoena or order issued under this subsection:

- (1) must be served in accordance with the Indiana Rules of Trial Procedure; and
- (2) may be enforced in the circuit or superior court with jurisdiction for the county in which the subpoena or order is served.

As added by P.L.365-1983, SEC.2. Amended by P.L.202-1984, SEC.2; P.L.342-1985, SEC.8; P.L.4-1992, SEC.52; P.L.40-1994, SEC.82.

IC 36-8-8-20

Special lump sum death benefit in addition to other benefits

Sec. 20. (a) As used in this section, "dies in the line of duty" has the meaning set forth in section 14.1 of this chapter.

(b) Benefits paid under this section are subject to section 2.5 of this chapter.

(c) A special death benefit of seventy-five thousand dollars (\$75,000) for a fund member who dies in the line of duty before January 1, 1998, and one hundred fifty thousand dollars (\$150,000) for a fund member who dies in the line of duty after December 31, 1997, shall be paid in a lump sum by the public employees' retirement fund from the pension relief fund established under IC 5-10.3-11 to the following relative of a fund member who dies in the line of duty:

- (1) To the surviving spouse.
- (2) If there is no surviving spouse, to the surviving children (to be shared equally).
- (3) If there is no surviving spouse and there are no surviving children, to the parent or parents in equal shares.

(d) The benefit provided by this section is in addition to any other benefits provided under this chapter.

As added by P.L.223-1986, SEC.4. Amended by P.L.55-1989, SEC.66; P.L.225-1991, SEC.4; P.L.53-1993, SEC.5; P.L.49-1998, SEC.10.

IC 36-8-8-21

1977 fund members; age limitation; aptitude, physical agility, and physical and mental standards; credit for prior service

Sec. 21. (a) This section applies to firefighters who:

- (1) are employed by units that become participants in the 1977 fund under section 3(c) of this chapter; or
- (2) become members of the 1977 fund under section 7(g) of this chapter.

(b) A firefighter may become a member of the 1977 fund without meeting the age limitation under section 7(a) of this chapter if the firefighter satisfies:

- (1) any aptitude, physical agility, or physical and mental standards established by a local board under IC 36-8-3.2; and

(2) the minimum standards that are:

(A) adopted by the PERF board under section 19 of this chapter; and

(B) in effect on the date the firefighter becomes a member of the 1977 fund.

(c) Credit for prior service of a firefighter who becomes a member of the 1977 fund under this section shall be determined under section 18 or 18.1 of this chapter. No service credit beyond that allowed under section 18 or 18.1 of this chapter may be recognized under the 1977 fund.

As added by P.L.313-1989, SEC.3. Amended by P.L.4-1990, SEC.21; P.L.4-1992, SEC.53.

IC 36-8-8-22

Selection of administrative law judge

Sec. 22. Nothing in this chapter limits the discretion of the PERF board to select an administrative law judge under IC 4-21.5-3-9.

As added by P.L.311-1989, SEC.16.